United Exposition Service Company, Inc. *and* Teamsters Local 85, International Brotherhood of Teamsters, AFL–CIO. Case 20–CA–25297

March 22, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon a charge and an amended charge filed by Teamsters Local 85, International Brotherhood of Teamsters, AFL–CIO, the Union, on April 19 and May 4, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1993, against United Exposition Service Company, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On January 10, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On January 12, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.[1]

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Nevertheless, the Respondent failed to file an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Brisbane, California, has been engaged in convention and trade show service contracting. During the fiscal year ending February 28, 1993, the Respondent, in conducting its business operations, purchased and received at its Brisbane, California facility goods valued in excess of $50,000 which originated from points outside the State of California.

During the fiscal year ending February 28, 1993, the Respondent, in conducting its business operations, performed services valued in excess of $50,000 for enterprises which themselves meet one of the Board's jurisdictional standards, other than an indirect standard.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees covered by the terms of the collective bargaining agreement between Respondent and the Union, effective by its terms from July 1, 1989, through June 30, 1992, and extended thereafter by mutual agreement [herein called the Agreement]; excluding guards and supervisors as defined by the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the Agreement.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

[1] On January 16, 1994, Greyhound Exposition Services, Inc. (GES), filed a cross-motion for summary judgment with the Board in response to the Notice to Show Cause asserting that it purchased the stock of the Respondent Company on May 27, 1993; that no answer was filed because the complaint was not sent to it; that the Union received the information a month in advance of the consummation of the sale/merger; that there was therefore no failure or refusal to bargain as alleged in the complaint; and that, accordingly, the General Counsel's motion should be denied and the complaint dismissed. We find that this response by GES is insufficient to raise an issue for hearing as to the allegations against the Respondent or to warrant denial of the General Counsel's motion for summary judgment. We note in this regard that GES has not purported to answer the complaint on the Respondent's behalf. Nor is GES specifically alleged in the complaint to be derivatively liable for the Respondent's actions, either as a successor or otherwise. To the extent GES is concerned about such potential liability, such matters are appropriately resolved in a compliance proceeding. See *Frederick Iron & Steel*, 303 NLRB 514 fn. 1 (1991), and *National Transit*, 299 NLRB 453 (1990). Accordingly, GES' cross-motion for summary judgment is denied.

[2] Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent after service of the complaint, we find that this does not warrant denying the Acting General Counsel's Motion for Summary Judgment. See *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

Since on or about April 16, 1993, the Union, in writing, has requested the Respondent to furnish it with information on a sale/merger in progress (the information) as follows:

> Please provide the following information for all transactions of proposals you have under consideration.
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> (1) Please identify and describe in detail the nature of the transaction (e.g., merger, consolidation, stock transfer, asset transfer, etc.) and identify by name, address and telephone number all parties thereto.
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> (2) Please provide copies of relevant portions of any documents, including proposals or contracts, which describe the contemplated transaction. By this request, we do not intend to require disclosure of confidential financial information, but only that information necessary to enable us to understand the nature of the transaction and its potential impact upon the employees we represent.
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> . . . .
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> (6) Have any offers of employment been extended by any party to the transaction to any of your employees? If so, please identify all individuals to whom such offers were extended and provide the terms and conditions upon which such offers were made and the date or dates of said offers.

The information referred to above is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit. At no time, however, has the Respondent furnished the information to the Union.

The Respondent failed and refused to furnish the information to the Union sufficiently in advance of the consummation of the sale/merger in order to allow the Union a reasonable opportunity to bargain in advance of the consummation about the effects of the transaction on unit employees.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully failed and refused to provide the Union information concerning the sale/merger that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

In addition, having found that the Respondent, by such failure and refusal, unlawfully deprived the Union of a reasonable opportunity to bargain about the effects of the sale/merger prior to its consummation, we shall order the Respondent to bargain with the Union over the effects of the sale/merger on request. As the nature of the information sought by the Union indicates that employees may have been terminated or otherwise suffered losses as a result of the Respondent's actions, we shall accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses they may have suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).[3] Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in the event the Respondent's facility is currently closed and the Respondent therefore has no place of business to post the attached notice, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, United Exposition Service Company, Inc., Brisbane, California, its officers, agents, successors, and assigns, shall

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[3] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). In *Transmarine*, the Board ordered an employer that had unlawfully refused to bargain over the effects of its plant closure decision to, inter alia, pay unit employees at their normal rate of pay beginning 5 days after the Board's decision until the first of four events: (1) an effects bargaining agreement was reached; (2) a bona fide bargaining impasse was reached; (3) the union failed to timely request or commence bargaining; or (4) the union failed to bargain in good faith. Id. The Board further specified that ''in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.'' Id.

As the complaint and motion are less than clear, however, as to the actual impact, if any, of the sale/merger on the employees, we shall permit the Respondent to contest the appropriateness of such a *Transmarine* backpay remedy at the compliance stage.

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Teamsters Local 85, International Brotherhood of Teamsters, AFL–CIO by failing and refusing to furnish the Union information concerning the sale/merger that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the following unit:

> All employees covered by the terms of the collective bargaining agreement between Respondent and the Union, effective by its terms from July 1, 1989, through June 30, 1992, and extended thereafter by mutual agreement [herein called the Agreement]; excluding guards and supervisors as defined by the Act.

(b) Failing and refusing to furnish such information to the Union sufficiently in advance of the consummation of the sale/merger to allow the Union a reasonable opportunity to bargain in advance of the consummation about the effects of the transaction on unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union the information it requested on or about April 16, 1993, concerning the sale/-merger.

(b) On request, meet and bargain in good faith with the Union concerning the effects of the sale/merger on unit employees.

(c) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(d) Sign copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent at its Brisbane, California facility immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted.[5] If the facility is closed, the Respondent shall instead mail an exact copy of the signed notice to all unit employees at their last known address and to the Union at its business address.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Teamsters Local 85, International Brotherhood of Teamsters, AFL–CIO by failing and refusing to furnish the Union information concerning the sale/merger that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the following unit:

> All employees covered by the terms of the collective bargaining agreement between the Employer and the Union, effective by its terms from July 1, 1989, through June 30, 1992, and extended thereafter by mutual agreement [herein called the Agreement]; excluding guards and supervisors as defined by the Act.

WE WILL NOT fail and refuse to furnish such information to the Union sufficiently in advance of the consummation of the sale/merger to allow the Union a reasonable opportunity to bargain in advance of the consummation about the effects of the transaction on unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the Union the information it requested on or about April 16, 1993, concerning the sale/merger.

WE WILL, on request, meet and bargain in good faith with the Union concerning the effects of the sale/merger on unit employees.

WE WILL pay limited backpay to the unit employees who were employed by us, plus interest, as required by the Board's Order.

UNITED EXPOSITION SERVICE COMPANY, INC.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[5] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.